

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF VIRGINIA  
LYNCHBURG DIVISION**

BARRY G. WHITE,

Plaintiff,

V.

CHRISTOPHER M. CUMMINGS

Defendant.

Case No. 6:24-cv-00021

**UNITED STATES' MOTION TO SUBSTITUTE THE UNITED STATES OF AMERICA AS PARTY DEFENDANT FOR CHRISTOPHER M. CUMMINGS**

The Defendant Christopher M. Cummings, by counsel Rachel Barish Swartz, Assistant United States Attorney for the Western District of Virginia, respectfully requests the Court to substitute the United States of America as party Defendant for Christopher M. Cummings (“Cummings”), as the Court lacks personal jurisdiction over Cummings. The only proper party Defendant in an action of this nature is the United States of America, pursuant to 28 U.S.C. §2679(d)(1). The grounds for this substitution are:

1. Cummings was listed as the Defendant in the above civil action.
2. The Plaintiff alleges negligence committed by Cummings while he was employed as an agent by the U.S. Immigration and Customs Enforcement, and that the Plaintiff was damaged as a result of Cummings' actions.
3. The Federal Tort Claims Act, 28 U.S.C. §§ 1346(b); 2671-2680 (1988) ("FTCA"), as amended by the Federal Employees Liability Reform and Tort Compensation Act of 1988 § 5, Pub. L. No. 100-694, 102 Stat. 4563 (1988), provides that a suit against the United States shall be the exclusive remedy for persons with claims for damages resulting from the negligent or wrongful

acts or omissions of federal employees taken within the scope of their office or employment. 28 U.S.C. § 2679(b)(1). The state law torts alleged in the Plaintiff's Complaint fall within this provision.

4. The Federal Tort Claims Act provides that upon certification by the Attorney General, or his designee, that a federal employee was acting within the scope of employment at the time of the incident out of which a state law claim arose, any civil action arising out of the incident shall be deemed an action against the United States and the United States shall be substituted as sole Defendant with respect to those claims. 28 U.S.C. § 2679(d)(1). The Attorney General has delegated certification authority to the United States Attorney. 28 C.F.R. § 15.4.

5. Christopher R. Kavanaugh, the United States Attorney for the Western District of Virginia, has certified that at the time of the conduct alleged, Cummings was acting within the scope of his employment. The Court is respectfully referred to the Certification of Scope of Employment of United States Attorney, filed along with this motion.

6. As noted above, the Federal Tort Claims Act provides a limited waiver of sovereign immunity for tort actions against the federal government and contains explicit procedural rules which must be followed in order to invoke the Court's jurisdiction. Among these is 28 U.S.C. § 2679, which provides that these suits must be brought against the United States and cannot be brought against the federal agencies whose employees were allegedly negligent. Specifically, Section 2679 says:

The authority of any federal agency to sue and be sued in its own name shall not be construed to authorize suits against such federal agency on claims which are cognizable under section 1346(b) of this title, and the remedies provided by this title in such cases shall be exclusive.

The United States respectfully requests entry of the accompanying proposed Order dismissing this action against Defendant Cummings.

A proposed order has been submitted for the Court's convenience.

Respectfully submitted,

CHRISTOPHER R. KAVANAUGH  
United States Attorney

Date: May 7, 2024

/s/ Rachel Barish Swartz

Rachel Barish Swartz  
Assistant United States Attorney  
New York State Bar No. 4667044  
Western District of Virginia  
P. O. Box 1709  
Roanoke, VA 24008-1709  
Tel: (540) 857-2250  
Fax: (540) 857-2614  
Email: rachel.swartz@usdoj.gov

**CERTIFICATE OF SERVICE**

I hereby certify that on May 7, 2024, I caused a true copy of the foregoing Motion to Substitute the United States of America as Party Defendant for Christopher M. Cummings to be electronically filed with the Clerk of the Court using the CM/ECF system, which will provide electronic notice to all counsel of record.

/s/ Rachel Barish Swartz  
Rachel Barish Swartz  
Assistant United States Attorney